
**APPEALS BOARD
UTAH LABOR COMMISSION**

ANTHONY SCOZZAFAVA,

Petitioner,

vs.

**DAVIS FREIGHT, LIBERTY
MUTUAL INSURANCE CO. and
UNINSURED EMPLOYERS FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0491

Liberty Mutual Insurance Co., workers' compensation insurance carrier for Davis Freight (bankrupt), requests review of Administrative Law Judge Lima's award of benefits to Anthony Scozzafava under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Scozzafava claims workers' compensation benefits for a left hip injury caused by his work at Davis Freight on March 2, 2005. Judge Lima held an evidentiary hearing on Mr. Scozzafava's claim and then awarded benefits. Liberty Mutual now argues Judge Lima should have granted Liberty Mutual's request for continuance of the evidentiary hearing.

DISCUSSION

The Appeals Board adopts Judge Lima's findings regarding Mr. Scozzafava's injury. In summary, Davis Freight employed Mr. Scozzafava as a truck driver. On March 2, 2005, he felt extreme pain in his left hip while moving a heavy refrigerator inside his delivery truck. He reported the injury to his employer, sought emergency medical treatment, and was diagnosed with acute left hip strain. The injury prevented Mr. Scozzafava from continuing to work as a truck driver. He has not yet reached medical stability pending further diagnosis and treatment.

As to the circumstances surrounding Liberty Mutual's request for continuance, the record establishes that on October 12, 2005, the Commission scheduled an evidentiary hearing on Mr. Scozzafava's claim, to be held on January 17, 2006. Approximately two months later, on December 7, 2005, Liberty Mutual requested a continuance of the hearing on the grounds "the parties will not have all the medical evidence necessary to proceed to a hearing on the date scheduled." Judge Lima

ORDER AFFIRMING ALJ'S DECISION
ANTHONY SCOZZAFAVA
PAGE 2 OF 3

denied Liberty Mutual's request for continuance. The hearing proceeded as scheduled, but during the course of the hearing Liberty Mutual renewed its request for continuance to allow more time to obtain Mr. Scozzafava's medical records. Without explicitly ruling on Liberty Mutual's motion for continuance, Judge Lima in effect denied the motion by going forward with the hearing. Several months later, Judge Lima issued her decision awarding benefits to Mr. Scozzafava.

In requesting review of Judge Lima's decision, Liberty Mutual repeats its assertion of difficulty in obtaining Mr. Scozzafava's records. The Appeals Board recognizes that parties to adjudicative proceedings before the Commission must be given a reasonable opportunity to obtain relevant evidence. To that end, procedural rules should not be applied mechanistically, without due regard for the ultimate objective of deciding cases correctly on the basis of all relevant information. The Appeals Board also notes that in this case the process of obtaining medical records was complicated by a series of errors and missteps by all the parties.

In light of the foregoing considerations, the Appeals Board has carefully reviewed the entire record of this proceeding. Although the Appeals Board believes it would have been reasonable under the circumstances for Judge Lima to have granted Liberty Mutual's request for continuance, Liberty Mutual has not shown that it suffered any actual prejudice from denial of the continuance. In particular, Liberty Mutual has not identified any medical issues that have not been sufficiently addressed by the existing record, nor has Liberty Mutual proffered any significant new evidence. In summary, the Appeals Board concludes that the circumstances of this case, taken as a whole, do not justify a new hearing.

ORDER

The Appeals Board affirms Judge Lima's decision. It is so ordered.

Dated this 26th day of March, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

ORDER AFFIRMING ALJ'S DECISION
ANTHONY SCOZZAFAVA
PAGE 3 OF 3

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.